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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,946	01/23/2004	Donald Dubac	eVionyx-0061USAAON00	5070

26665 7590 09/29/2004

REVEO, INC.
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ELMSFORD, NY 10523

EXAMINER	
TSO, EDWARD H	

ART UNIT	PAPER NUMBER
2838	

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/763,946	DUBAC ET AL.	
	Examiner	Art Unit	
	Edward Tso	2838	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure should be carefully reviewed to ensure that any and all grammatical, idiomatic, and spelling or other minor errors are corrected. Furthermore, the reference to the parent application to include its status is required.

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference of Schwartz et al. (US 6,157,167) in combination with the reference of DeBauche (US

5,793,187). The reference of Schwartz et al. discloses the following features associated with the given claims:

> 1. A power generating system (fig. 1) comprising: a plurality of electrochemical cells (elements 11, 12, 21 and 22) that are selectively activated individually or in combination (see at least col. 2, lines 19 – 41);
>
> 2. The power generating system as in claim 1, further comprising a controller (element 14) to selectively activate one or more cells.
>
> 4. An electrochemical power system for connection to a load comprising: a plurality of arrays of electrochemical cells in a parallel configuration, each array including a plurality of electrochemical cells arranged in series (in that each string is a 1X2 series connected array) ; and a controller system (14) for controlling;
>
> 5. The system as in claim 4, wherein the controller system includes a switch associated with each of the arrays (P SENSE C1 AND C2) and a logic system (14).
>
> 6. An electrochemical cell system comprising: a plurality of sections of electrochemical cells (11, 12, 21, 22), wherein individual sections are controlled (14)
>
> 12. A method of generating power comprising: selectively activating a first group of one or more electrochemical cells of an array of cells (11, 12, 21 and 22);

While the reference of Schwartz et al. does show control of the selection of the arrays (i.e. strings) of cells (or batteries), it does not disclose this control used to discharge the batteries as claimed in:

claim 1 ("to produce power from selected cells."),

claim 4 ("which one or more arrays of the plurality of arrays is to be in connection with the load"),

claim 6 ("controlled for activation of one section or for activation in successions", which was implicitly defined in the specification to be directed toward discharged to load), and

claim 12 ("based on requirement of an associated load; and switching to a second group of one or more electrochemical cells of the array when the first group is discharged.").

The reference of DeBauche teaches of the control of the discharging of two batteries in order to address the power requirements of a load device (see at least the abstract). It would have been

obvious to one having ordinary skill in the art to use the teaching of a dual battery power delivery (i.e. discharge) of the reference of DeBauche with invention of Schwartz et al. in order to provide a means to address the power requirements of a device with a variable load. While the reference of Schwartz et al. does not specifically disclose the use of a third array (i.e. string) group as claimed in claim 12, it does suggest that other arrangements beyond the 2 1x2 array group could be used with the disclosed invention (see col. 1, lines 29-39. It would have been obvious to one having ordinary skill in the art to incorporate a third array (i.e. battery string) into the disclosed invention of Endo as is suggested in order to improved the flexibility and reliability of the power supply.

Regarding the use of rechargeable and non-rechargeable batteries as claimed in claim 13, the reference of Schwartz et al. does not disclose the use of non-rechargeable batteries. The reference of DeBauche teaches of the use of a combination of rechargeable and non-rechargeable batteries in order to address the power and voltage requirements of a variable load device. It would have been obvious to one having ordinary skill in the art to use the teaching of the use of the combination of non-rechargeable and rechargeable batteries in the invention of Schwartz et al. in order to further enhance the provision of a multiple battery power supply system with the ability to address a variable load device by using inherent power delivery characteristics of a non-rechargeable battery and a rechargeable battery due to the differences in their charge capacities and internal resistance.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference of Schwartz et al. (US 6,157,167) in combination with the teachings of the reference of

DeBauche (US 5,793,187) as described above and in further combination with the teachings of the reference of Endo et al. (US 4,056,764). The selective discharge control system of DeBauche teaches of the uses of current output thresholds (load levels) as claimed in claim 9 in that a rechargeable battery is used to address a load requirement above a given threshold and the non-rechargeable is used for a load requirement below a given threshold (see at least fig. 5 of DeBauche). Also taught is the use of the non-rechargeable battery until it is depleted as claimed in claim 10 in that the non-rechargeable battery is used until it is no longer usable by the system (see at least col. 1, lines 61-67). The reference of DeBauche does not teach of the use of a metal air battery as claimed. The reference of Endo et al. teaches of the use of a metal air battery in dual battery power supply system where a non-rechargeable battery is used with rechargeable battery (see col. 1, lines 24-27). It would have been an obvious matter of design choice to use a metal air battery as suggest in the reference of Endo et al. in the invention of Schwartz combined with the dual battery power supply system teaching of DeBauche, since applicant has not disclosed that the use of a metal air battery solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the alkaline battery.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

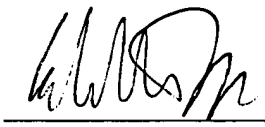
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,713,988. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are broader and would encompass the subject matter claimed in the patent.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner at the below-listed number.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 571 272 2800, Monday-Friday, 830am to 5:00pm, EST.

By: 

EDWARD TSO
Primary Examiner
571 272 2087